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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Comments by the Government of Trinidad and Tobago on the Concluding Observations of the Human Rights Committee

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1. The Government of Trinidad and Tobago, having considered the Concluding Observations of the Human Rights Committee contained in document CCPR/CO/70/TTO of 3 November 2000, wishes to express satisfaction at the positive remarks made concerning its implementation of the Covenant in Trinidad and Tobago.

1. Positive aspects highlighted by the Human Rights Committee

2. The Committee welcomed the setting up of the Human Rights Unit in the Ministry of the Attorney-General and Legal Affairs and the initiatives taken by the Unit to improve the protection of human rights, particularly its activities in clearing the backlog of reporting under the Covenant and other human rights instruments to which Trinidad and Tobago is a State party. The Committee also commended improvements to the remedies provided in cases of domestic violence, together with specialized personnel now available to assist victims, including the Domestic Violence Unit set up by the Ministry of Culture and Gender Affairs. The Committee took note with satisfaction of the institution of the independent Police Complaints Authority and looked forward to a rapid proclamation of the Act extending its powers. The Committee also noted with satisfaction that the extension of legal aid, both in terms of geographical distribution and of the tribunals before which it is available, as well as the raising of fees so as to attract higher quality advocates, increases compliance with article 14 (3) (d) of the Covenant.

3. However the Government of Trinidad and Tobago notes with concern the failure of the Committee to fully acknowledge many other significant measures implemented by the State party to further the protection of the rights contained in the Covenant. Although these measures were brought to the attention of the Committee, they have been omitted from mention in the Committee's Concluding Observations.

2. Some of the positive aspects ignored by the Human Rights Committee

4. As the Government has urged in its supplementary answers provided to the Committee, it is quite wrong for the Committee to disregard legislative measures which are being taken by the Government to comply with the articles of the Covenant, but which are not yet law, or which if they are law, have not yet been implemented. It is not unusual that after Bills are passed steps have to be taken to put the necessary infrastructure and other administrative measures in place to implement the Bill. Governments cannot in advance of the decision of Parliament provide the resources and the other necessary structures to implement a law because the Parliament may vote against the law. The Human Rights Committee has a duty under article 40 of the Covenant to consider what measures Governments take to implement the Covenant. Measures would include the steps the Government takes to have the proposal formulated in all of its pre-legislative processes or to have the Bill debated in Parliament or to have the Bill implemented after it is passed in Parliament.

5. Some of the significant progressive measures implemented by the State party, which were not mentioned by the Committee in its Concluding Observations include the following:

Article 2

6. Article 2 (a), paragraph 3 (a) of the Covenant requires that each State party to the Covenant should undertake to ensure that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by a person acting in an official capacity. Substantial progress has been made by the State party in this regard with the recent enactment of the Judicial Review Act, 2000. This Act was proclaimed on 6 November 2000 and is now in force. The purpose of this legislation is to set out the substantive law governing judicial review applications and to introduce public interest litigation. This legislation permits non-governmental organizations and persons who were not directly affected by a public wrong to approach the court on behalf of poor persons to seek redress for them. This removes the impediment of locus standi for granting relief to individuals for public wrongs. Under the Act, the court does not necessarily have to be approached by formal court proceedings. It can be approached by means of a letter.

Article 3

7. Article 3 of the Covenant aims at ensuring the equal right of women to the enjoyment of all civil and political rights provided for in the Covenant. These relate inter alia to the prevention of discrimination on the ground of a person's sex. State parties to the Covenant are required to report on the legislative, administrative and other measures they have taken to implement in concrete terms the principle of equality of men and women. Consistent with the requirement of this Article, the Government has enacted the following legislation.

8. The Maternity Protection (Amendment) Act, No. 4 of 1998 was enacted to ensure that women are not discriminated against on the grounds of pregnancy and to safeguard their effective right to work. It provides for maternity leave with pay; protection against dismissal on the grounds of pregnancy and the right to return to work on the same terms and conditions after maternity leave.

9. The Cohabitational Relationships Act, No. 30 of 1998, was enacted to protect the rights of persons who enter into cohabitational or de facto arrangements, without a marriage contract. There is a high incidence of common law or de facto relationships in this jurisdiction and the existing law had failed to recognize and to provide remedies to meet the social and economic consequences which attend the breakdown of such relationships. This legislation allows a man or a woman involved in a cohabitational relationship to apply to the High Court for relief in relation to property and maintenance.

10. The Sexual Offences (Amendment) Act, 2000 which came into force in September of this year was introduced in the face of an alarming increase in sexual crimes against women. This legislation as amended redefines the offence of rape in gender neutral terms and has increased the penalty for rape committed in aggravated circumstances. It also empowers the court to order a person who is convicted of an offence to pay the victim adequate compensation. Under this legislation, the law has been amended so that a husband or cohabitant may now be charged with

the offence of rape or grievous sexual assault of his wife or a cohabitee in the same way as any other person. The amendment also provides for the fulfilment of notification requirements of convicted sex offenders at police stations in the district in which they reside to enable the police to keep track of known sex offenders, thereby providing greater protection to the national community.

Article 9

11. Article 9 (3) of the Covenant provides that anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time. Trinidad and Tobago, consistent with the requirements of this Article, has made significant progress in reducing the delays in the administration of criminal justice. Administrative measures implemented over the period 1996-1999 which have achieved the purpose of ensuring there is no delay include the following:

Increasing the number of High Court and Court of Appeal Judges and Magistrates, including support staff;

Providing computer-aided transcription (CAT) services at five criminal courts, the Court of Appeal in Port of Spain and the Supreme Court;

Funding judicial training;

The establishment of a Department of Court Administration in the Supreme Court and provision of appropriate staffing for that Department;

The upgrading of computer facilities at the Supreme Court;

The introduction of a pilot programme of Judicial Research Assistants in the Supreme Court;

The refurbishment of 16 Magistrates' Courts throughout the country and the construction of new Magistrate's Courts.

Article 10

12. Article 10 (1) requires that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Article 10 (3) states that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. Article 14 provides further that in the case of juveniles, the procedure should be such as will take into account their age and the desirability of promoting their rehabilitation. In this regard, the Government by legislation has introduced alternatives to imprisonment in the form of the Community Service Orders Act, 1997 and the Community Mediation Act No. 13 of 1998. These pieces of legislation recognize the fact that petty and first time offenders can be adequately punished and indeed, rehabilitated within the community, thereby reducing the overall problem of overcrowding in the

prisons. The Community Mediation Act only recently came into force as the administrative and structural mechanisms first had to be put in place. Under that Act mediation is available to first time offenders who commit any of a scheduled list of non-serious, summary offences. Quite significant also is the extension of the Act to mediation in civil matters. Parties can mediate on any petty civil matter and certain matrimonial and family matters. In criminal matters, either the offender or the victim may apply to the Court for mediation. In the interest of rehabilitating the offender, the victim may require that the offender participate in an educational or rehabilitative programme. The Ministry of the Attorney-General has worked with the Ministry of Social Development in the training of mediators and the establishment of mediation centres. Seminars have been arranged to sensitize magistrates, police officers and prison officers on the purpose, practices and outcome of mediation as an alternative to litigation. Mediation Centres have also been established in three locations in the country on a pilot basis at first instance.

13. Also significant in relation to article 10 of the Covenant is that the Government has caused the Law Commission to prepare a paper on penal reform. Based on the recommendations, appropriate legislation has been drafted for enactment into law. This legislation when enacted will substantially improve the protection of the rights under articles 7 and 10 of the Covenant. Some of the proposed legislation include the following:

The Summary Offences (Amendment) Bill, 2000 recognizes the need to treat young offenders in a more sensitive and humane manner. The legislation seeks to empower the Director of Public Prosecutions to divert first time petty offenders away from the traditional court process and penal institutions and into community based rehabilitative programmes. Once enacted, this legislation would complement the newly introduced legislative systems of Community Service Orders and Community Mediation;

The Prison (Amendment) Rules, 2000 seek to amend the existing Prison Rules made under the West Indians Prisons Act, 1838 of the United Kingdom which came into effect in Trinidad and Tobago in August, 1943. The amendment Rules, which are inspired by certain provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners, focus inter alia on the conditions of accommodation in the prison, punishment and the internal complaint procedure for prisoners;

The Prisons (Amendment) Bill, 2000, which has also been drafted under this package of legislation, seeks to amend the Prisons Act (Chap. 13:01) to increase the number of Inspectors of Prisons which the Minister of National Security can appoint;

The Youthful Offenders (Attendance Centres) Bill, 2000 seeks to provide custodial sentencing alternatives for the young offender. The Bill makes provision for the establishment of Attendance Centres which first time and other offenders under the age of 21 can be required to attend for a specified number of hours per day under supervision. This measure may pre-empt the committal of young offenders to industrial schools.

Article 19

14. Article 19 of the Convention refers to the freedom of individuals to seek, receive and impart information and ideas of all kinds. In this regard, the Committee has omitted to comment

favourably on the introduction by the present Government of the new Freedom of Information legislation. This legislation represents a watershed development in the relationship between the Government and the people of Trinidad and Tobago. Previously there was a culture of secrecy in the public service. This Act now gives all members of the public a statutory right to know and a general right to access information in documentary form in the possession of public authorities. Under the Act all public authorities are required to cause to be published in the official Government publication, a statement of the documents that are available and the place or places at which copies of such documents may be inspected or purchased. The statement of documents must be updated for publication every year. This right of access is a legally enforceable right. Each public authority will have a designated officer who will undergo training as to how to deal with requests from members of the public and the media. Earlier this year, a meeting was organized by the Ministry of Public Administration to sensitize the public and the media on the new law. Committees have been set up in various Ministries to effect the implementation of the Act. The Ministry of Public Administration has trained some 186 officers representing all Ministries and statutory authorities to deal with requests from with members of the public. That Ministry has also prepared a handbook explaining the implications of the Act. The Act is expected to come into force by February 2000.

Article 24

15. Article 24 of the Covenant refers to the right of every child to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. The present Government has made significant progress in the implementation of a comprehensive package of legislation dealing with social reform in respect of children, families, older persons and socially displaced persons. This was introduced against a background of problems including the growing number of street children; the alleged abuse and neglect of children in Children's Homes; the unsuitable and unworkable adoption process for children; the absence of a legal framework to facilitate children who require temporary care with families other than their own; the increasing number of socially displaced persons on our streets and the ill-treatment of the elderly in our homes for the aged. The new legislation relating to children includes:

The Children (Amendment) Act, No. 68 of 2000 which brings the present legislation pertaining to children in line with the United Nations Convention on the Rights of the Child. Under this legislation the definition of "child" has been amended to raise the upper age limit of a child from fourteen to eighteen. The Bill also abolishes the right of a court to order corporal punishment as a penal sanction against children and prohibits teachers from inflicting corporal punishment against children in schools;

The Adoption of Children Act, No. 67 of 2000 which repeals the existing Adoption of Children Act, Chapter 46:03 and regulates the procedure governing adoption. This legislation incorporates recommendations for reform of the adoption laws submitted by various interest groups in the society. The legislation eliminates the hardship previously experienced by persons resident abroad who wished to adopt children in Trinidad and Tobago. It also eliminates the discriminatory practice of not making an adoption order where the sole applicant is a male. The new Act has introduced provisions for the disclosure of birth records of adopted children and ensures that where arrangements or

decisions are made relating to the adoption of a child, the welfare of the child is safeguarded and promoted, with the wishes and feelings of the child being taken into consideration;

The Children's Community Residences Foster Homes and Nurseries Act, No. 65 of 2000 makes provision for the monitoring, licensing and regulating of children's homes, rehabilitation centres, and nurseries by the proposed Children's Authority. The new legislation sets out specific licensing, monitoring and regulating requirements which must be met and makes provision for a system of foster care. Existing children's homes and nurseries will therefore be more tightly regulated and an emphasis placed on standards of care and rehabilitation. The Authority is required under this Act to inspect all residences prior to the issue of a residence licence, to ascertain its suitability for the purpose.

The Children's Authority Act, No. 64 of 2000, establishes a Children's Authority to inter alia monitor community residences, foster homes and nurseries; to investigate complaints of staff, children and parents or guardians with respect to any child in the care of a residence, home or nursery; to issue, revoke and withdraw licences of community residences and nurseries; to investigate complaints or reports of mistreatment of children in homes and to act as an advocate for the rights of all children in Trinidad and Tobago. Under the Act the Authority is empowered to receive and temporarily assume parental rights and obligations with respect to any child brought to its attention as being in need of care and protection. The Authority will be responsible inter alia for keeping track of all children at risk and appearing before the Court to ensure that they are adequately and suitably cared for and protected.

16. The above-mentioned pieces of legislation have been approved by Parliament and are expected to come into force on the 31 January 2001.

Article 26

17. Article 26 of the Covenant provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. Consistent with the requirements of this article 26, the Government in addition to enacting Equal Opportunity legislation has passed a Miscellaneous Laws (Spiritual Reform) Act, 2000 in an effort to decriminalize existing provisions of Trinidad and Tobago's statute law, which have been identified as discriminatory, in that they hampered the freedom of the Shouter Baptist and Orisa Baptist religious groups in the practice of their religions. This legislation amends the Summary Courts Act to remove references to "obeah" and the offence of the "practice of obeah" and substitute a much wider offence. The offence of the beating of drums and other musical instruments has also been removed when it occurs in the context of a religious ceremony or in a place of worship. This new legislation is now in force.

Democracy and Good Governance

18. In addition to the legislation mentioned above, the Government has taken a significant step in the implementation of legislation to ensure transparency and accountability in government. In the face of calls for reform of the existing integrity laws, the Government caused

the Law Commission to prepare a Green Paper entitled "Integrity in Public Life - Towards the Reform of the Law". The Government took the initiative in having this Green Paper placed before a Joint Select Committee of Parliament for its views and recommendations. In accordance with the recommendations of that Joint Select Committee, a new Integrity in Public Life was drafted. This new Act, which has replaced the Integrity in Public Life Act, 1987, constitutes a tremendous improvement to the existing legislation, establishing higher standards of accountability and transparency. The new Act has widened the category of persons falling within the jurisdiction of the Act and has strengthened the Commission's powers in the areas of investigation, prevention and corruption. It also affords the Commission greater access to information and the power to call for documents. The Act imposes heavy penalties for offences involving non-disclosure.

19. Another significant legislative measure in the promotion of accountability and transparency in public life is the enactment of the Constitutional (Amendment) No. 3 Bill in November 1999. This legislation amends the Constitution to enable Select Committees and Joint Select Committees of Parliament to be appointed to investigate and report to one or both Houses of Parliament, in respect of Government Ministries, Municipal Corporations, statutory authorities and enterprises owned or controlled by the State and Service Commissions (with the exception of the Judicial and Legal Service Commissions in relation to their administration), the manner of the exercise of their powers, their methods of functioning and any criteria adopted by them in the exercise of their powers. Service Commissions appoint, promote and discipline officers in the Public Service, the Teaching Service and the Police Service. This legislation appeals for accountability, transparency and openness in a free and democratic society. Under this legislation, each Service Commission is required to submit an annual report on its administration and the exercise of its powers and its methods of functioning. Further, if a Ministry of Government, or any part of it, is functioning in a corrupt manner, the Joint Select Committee can investigate the matter. Under the Constitution, the Ombudsman does not have the power to inquire into or question the policy of the Ministry. This legislation gives to the representatives of the People, the parliamentarians the power to scrutinize government action and administrative action.

3. Concerns and Recommendations of the Human Rights Committee - the Government's response

20. In paragraph 7, the Committee states:

The Committee places on record its profound regret at the denunciation of the Optional Protocol. In the light of the continued existence of the death penalty, and despite assurances by the delegation that proposals to extend the death penalty have been rejected, it recommends that:

(a) In relation to all persons accused of capital offences the State party should ensure that every requirement of article 6 is strictly complied with;

(b) In the event of reclassification of murder being brought into effect for persons to be tried and convicted, those already convicted of murder should be entitled to similar reclassification, in accordance with article 15.1; and

(c) The assistance of counsel should be assured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases carrying the death penalty.

In respect of the Committee's regret at the denunciation by Trinidad and Tobago of the first Optional Protocol to the International Covenant on Civil and Political Rights, Trinidad and Tobago was happy to be a party to the first Optional Protocol subject to its reservation that the Committee had no jurisdiction in respect of capital cases. It was the Committee itself, by its decision in the case of Rawle Kennedy, where by a majority of nine to four it declared the reservation of Trinidad and Tobago invalid, which left the Government of Trinidad and Tobago with no alternative but to withdraw completely from the Protocol.

21. Regarding the recommendations made by the Committee in respect of the continued existence of the death penalty in Trinidad and Tobago:

The State party strictly complies with article 6 of the Covenant and the Committee has no legitimate basis on which to allege, suggest or infer otherwise.

In the event of classification for the crime of murder being introduced, the effect on those already convicted of murder will be a matter to be considered by the Advisory Committee on the Power of Pardon.

The recommendations of the Committee that the State ensures the availability of legal aid to those accused of crimes immediately on arrest and throughout all subsequent proceedings, are already in place. The decision whether to grant legal aid in criminal matters lies strictly within the discretion of the Courts. Magistrates grant Legal Aid in all Magisterial (Criminal) matters. Applications can be made either to officers of the Authority who visit the prisons to receive applications or directly to the Court. Magistrates grant legal aid based upon the information supplied on the relevant forms and they may request the Director of the Authority to submit a "means report", on the applicant prior to granting aid.

With respect to criminal matters in the High Court, a judge of the High Court is empowered to grant legal aid after reviewing the application of the accused. Applications may be made directly to the court or to legal aid officers who receive applications on visits to the prisons. An attorney may be assigned to the applicant by the judge or authorization to grant legal aid may be given by the judge to the Authority, which will then assign an attorney. In the Court of Appeal, legal aid may be granted either by a Court of Appeal Judge or by a Magistrate, depending on where the application is forwarded (e.g. Magisterial Appeals). The approval to grant legal aid is usually sent to the Authority for the assignment of an attorney.

Legal aid is available for all proceedings in the Supreme Court which includes Constitutional Motions. However legal aid for Constitutional Motions is only granted when in the opinion of the Authority the person qualifies for legal aid, a serious constitutional question arises, and the application is not frivolous, vexatious or an abuse of the process of the Court.

The Legal Aid and Advice (Amendment) Act, 1999 has lowered the qualifying income limit for legal aid thereby increasing the net of persons who qualify for legal aid. It has also widened the category of matters for which legal aid is now available and increased the fees payable to legal aid attorneys thereby attracting more experienced attorneys to represent persons requiring legal aid. Section 11 of the amendment Act gives the Authority wide powers to develop and operate programmes for improving its efficiency. The Authority is in the process of implementing a system in which duty attorneys will be allocated to Magistrates' Courts throughout the country, especially in rural areas so that these attorneys can readily assist persons appearing in these Courts by providing immediate representation and advice. It is hoped that duty officers can provide advice to needy persons and assist the court in guilty pleas and advice with respect to consent orders. Plans are also under way to decentralize the services of legal aid by opening part time district offices in rural communities.

The Government funds the Authority on a yearly subvention. Annual estimates are submitted and allocations are usually granted based on the availability of funds. The Authority has seen an increase from the 1998 to 1999 budget of $2,269,000 to $3.5 million in the 1999-2000 budget. There is an estimated $5 million allocation in the 2000-2001 fiscal year.

22. In paragraph 8, the Committee states:

Upon ratifying the Covenant, the State party accepted obligations under articles 2.1 and 2.2 to ensure that all individuals subject to its jurisdiction should enjoy Covenant rights, and, insofar as not already in place, to take the necessary steps to adopt measures to give effect to those rights.

The State party may not rely on limitations in its Constitutions as grounds for non-compliance with the Covenant but should put in place the necessary laws to authorize such compliance.

The State is aware of its obligations under the Covenant and takes all the necessary steps, compatible with Constitutional obligations, to ensure compliance with the Covenant. However, the Constitution of the Republic of Trinidad and Tobago predates the accession by the State to the Covenant. The Committee must recognize that the Constitution is the highest form of law within the State. It is the authority under which all other laws are made and have their legitimacy. The Government by acceding to the Covenant cannot alter the domestic law of Trinidad and Tobago. That is the right of the Legislature. Where there is conflict between the domestic law of the State and the Covenant the domestic law will prevail until such time as the Legislature, acting in accordance with the Constitution, takes steps to amend the law.

23. In paragraph 9, the Committee states:

The Committee is concerned that a thorough review of domestic law, to ensure compliance with the Covenant norms, has not yet been completed.

The State party should, for example, align the limitations imposed by article 4 of the Covenant with domestic measures to be taken in cases of public emergency, so as to:

(a) Comply with the categorization of an emergency that it must threaten the "life of the nation";

(b) Respect the prohibition on derogation contained in article 4.2; the State party should establish that measures permitted under emergency powers are so compatible;

(c) Ensure that any derogations from the State party's obligations under the Covenant do not exceed those strictly required by the exigencies of the situation.

The review of domestic law to ensure compliance with the Covenant is under way and forms part of the reporting procedure now being undertaken by the State. With specific reference to article 4 of the Covenant - Public Emergencies - the emergency powers provisions of the Constitution of the Republic of Trinidad and Tobago provide a safeguard in respect of any laws made during a period of public emergency which are inconsistent with the human and fundamental rights provisions contained in sections 4 and 5 of the Constitution.

24. Article 7 (3) of the Constitution of the Republic of Trinidad and Tobago expressly provides that such laws must be shown to be reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency. This provision means that all inconsistent legislation can be challenged before the High Court and if shown to be not reasonably justifiable, such legislation will be struck down. Appeal will lie from the High Court to the Court of Appeal and then to the Judicial Committee of the Privy Council in London. This right of challenge extends to laws made in breach of all the fundamental and human rights provisions of the Constitution and is fully effective as the Courts of Trinidad and Tobago are not suspended during a period of public emergency but continue to exercise their full jurisdiction.

25. Even in times of emergency a person can only be arrested and deprived of liberty in accordance with due process of law. The Judicial Committee of the Privy Council in cases from the Caribbean dealing with states of emergency recognized that States have the power to deny fundamental rights and freedoms, but only in accordance with due process of law. Similarly, Parliament has the power to restrict and regulate the enjoyment of fundamental rights during public emergency if the Parliament considers that the peace, order and good government of the State at a particular time demands it.

26. Article 4 of the International Covenant on Civil and Political Rights provides that during periods of public emergency State parties may only derogate from their obligations under the Covenant to the extent strictly required by the exigencies of the situation and to the extent that such measures do not involve discrimination. There can be no derogation from certain rights contained in the Covenant. Although not couched in the same wording, the provisions contained in section 7 (3) of the Constitution of Trinidad and Tobago are for all practical purposes compatible with article 4 of the Covenant.

27. Two periods of public emergency are covered in the Report of the Republic of Trinidad and Tobago under consideration before the Committee. The function of the Committee in respect of article 4 is to ascertain whether, during those periods of public emergency, any derogation incompatible with article 4 was committed by the State party. It is not the function of the Committee to rewrite the Constitution of Trinidad and Tobago or to speculate or hypothesize as to if and how during a state of emergency the provisions contained in section 7 (3) of the Constitution of Trinidad and Tobago may lead to a breach of article 4 of the Covenant. The evidence shows that during the attempted coup in Trinidad and Tobago in 1990, the emergency powers provisions of the Constitution were tested and found to operate in full accordance with the obligations of the State under the Covenant.

28. In paragraph 10, the Committee states:

The Committee is concerned at the lack of remedies under domestic legislation, including the Constitution, for victims of discrimination within the full ambit of articles 2.3 and 26 of the Covenant.

The State party should ensure that remedies are available for the full range of discriminatory situations falling within the protection given by those articles and should include in its next report information on the extent to which this has been achieved.

Article 2.3 provides that the State party will undertake to ensure that a person whose rights and freedoms under the Covenant are violated will have an effective remedy. Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

29. Articles 4 and 5 of the Constitution mirror many of the rights contained in the Covenant. Section 14 of the Constitution clearly provides that a person who alleges that any of the provisions of the Constitution have been, are being or are likely to be infringed in relation to him may apply to the High Court for redress by way of originating motion. The High Court has original jurisdiction to hear and determine constitutional motions and is empowered to declare that the rights of any person, including aliens, have been contravened by the State. It is also the practice of the High Court to make an order of monetary compensation against the State in favour of the victim when a violation of a constitutional right occurs.

30. In relation to Article 26, Parliament has recently enacted the Equal Opportunity Act. The objective of this Act is to strive for equality of opportunity ensuring that no individual is excluded from the nation's benefits and resources by prohibiting discrimination on certain grounds such as sex, race, ethnicity, origin, religion, marital status and any disability, in the fields of employment, education, the provision of goods and services and the provision of accommodation.

31. The Equal Opportunity legislation provides that any person who alleges that he or she has been a victim of discrimination may lodge a written complaint with the Equal Opportunity

Commission setting out details of the alleged act of discrimination. The Commission is required to investigate each complaint lodged with it. The Commission has the power to resolve matters by conciliation. If conciliation is not appropriate or unsuccessful, the Commission may prepare and publish a report relating to the investigation with its recommendations. Where the subject matter remains unresolved the Commission is required, with the consent of the person making the complaint, to initiate proceedings before an Equal Opportunity Tribunal. The Tribunal shall be a superior court of record and shall have all the powers inherent in such a court. The Tribunal will consist of a Judge of the status of a High Court Judge, who shall be the Chairman and two lay-assessors. The Tribunal will have jurisdiction to hear and determine complaints referred to it by the Commission and to make such declarations, orders and awards of compensation as it thinks fit. The complainant and the respondent may appear before the Tribunal with or without legal counsel. Any party to a matter before the Tribunal will have a statutory right of appeal to the Court of Appeal on the grounds listed in the Act. The Act is expected to come into force by the 31 January 2001.

32. In paragraph 11, the Committee states:

The Committee urges that priority be given to all necessary preparations, so as to bring into force by proclamation at the earliest possible date the Equal Opportunities Act 2000 particularly in respect to the advancement of women.

In devising a legislative model for Trinidad and Tobago, it was recognized that it would be ambitious to attempt to deal with all aspects of discrimination and satisfy all the interest groups in an initial Act. The Working Paper prepared by the Law Commission emphasized the need for comprehensive research and analysis into the existence, nature and extent of discrimination in all areas of life in order to adequately guide the parameters of any anti-discrimination legislation. The Paper then proceeded to recommend a "starting model" upon which we can build. A Joint Select Committee of Parliament appointed to consider the Law Commission's Working Paper, held extensive consultations and agreed with the sentiments expressed in the Working Paper on this issue. In its Report, the Joint Select Committee stated that, "... it would be impossible to legislate to deal with all aspects of discrimination and that the best approach would be to formulate legislation which would constitute a good starting point from which the law can be developed to suit our needs".

33. Thus, while the Equal Opportunity Act, 2000 represents a very bold and pioneering move in the region, it was not possible at this time to include discrimination in every shape and form. The State must tread carefully in what is as yet an undeveloped area of law in the Caribbean.

Sexual Orientation:

34. The Act does not prohibit discrimination on the basis of a person's sexual preference or orientation. Again, the Government was guided by the Report of the Joint Select Committee. The Committee, despite its diverse membership and its consultation with experts and interest groups in the area, declared that it was unable to arrive at a definitive position on this issue. The Working Paper also recommended that as a starting point such a ground for discrimination should not be included. The Government has decided that in light of the groundbreaking nature of the Act, a conservative approach should be adopted. In any event, in as much as

homosexuality and lesbianism have not been decriminalized in Trinidad and Tobago, it is not recommended that the legislation be extended to include discrimination on the grounds of sexual orientation at this time.

Pregnancy:

35. With respect to the exclusion of "pregnancy" in the Act as a ground of discrimination, the Joint Select Committee did not address the issue of pregnancy in its report and, as such, did not recommend that it be included as one of the initial grounds of discrimination under the Act.

36. Although "pregnancy" is not specifically included under the Act, cases in the United Kingdom have established that childbearing and the capacity for childbearing are characteristics of the female sex. Therefore, discrimination on the ground of pregnancy constitutes discrimination on the ground of sex. It may therefore not be necessary to include "pregnancy" as a separate ground at this time.

37. The Government's commitment to the protection of pregnant women in the field of employment is, nevertheless, evidenced in the introduction and enactment of the Maternity Protection Act in 1998 referred to in article 3 of the Report. This Act ensures that women workers are ensured a statutory right to maternity leave with pay; the right to return to work after pregnancy under the same terms and conditions, and the right not to be dismissed on the ground of pregnancy.

Age:

38. The Act does not prohibit discrimination on the ground of "age". This is based on the recommendation of the Joint Select Committee that such a ground should be omitted until the implications are more fully explored and settled. The Government agreed with this recommendation since the impact of such legislation on matters such as the age of compulsory retirement; age restrictions for employment in the public service and elderly benefits need to be properly researched and analysed before such legislation can be enacted.

HIV/AIDS:

39. With respect to the exclusion of HIV status as a ground of discrimination, it is to be noted that the definition of "disability" under the Act is restricted to present physical and mental disabilities and does not cover the presence in the body of organisms capable of causing disease or illness. Persons who are HIV positive or who have AIDS would, therefore, not be protected against discrimination under the Act.

40. The Law Commission's Working Paper on Equal Opportunity Legislation alluded to the extension of equal opportunity legislation to cover persons who are discriminated against in certain fields because they are HIV positive or have AIDS with certain stated exceptions, such as where the person is unable to carry out the inherent requirements of a job; or where that person may require services or facilities which would impose unjustifiable hardship on an employer to provide; or where there would be a risk to the public health. This issue however was not specifically dealt with in the Report of the Joint Select Committee of Parliament.

41. The Government however in recognition of the high incidence of HIV infection and AIDS in Trinidad and Tobago, in December 1998 instructed the Law Commission to prepare a Working Paper on the need for legal reform in this area. On 29 May 1998, the Law Commission prepared the said Paper entitled "An Overview of HIV Infection and AIDS in Trinidad and Tobago: Exploring the Need for Legislation and Proposals for Reform". The Government instructed that the Paper be published for public comment. This was done in late August 1998. Based on comments received by the Law Commission on this Paper, legislation is being enacted to give effect to the following Recommendations of the Working Paper:

(i) Consideration should be given to enabling victims of rape/sexual offences, where a real possibility of HIV transmission exists, to have their assailants undergo compulsory testing for HIV;

(ii) Favourable consideration should be given to the document HIV/AIDS in the Workplace: A National Policy and its transition to legislation be expedited.

42. In accordance with these recommendations, the Government introduced an amendment to the Sexual Offences Act, 1986. Section 34 E of the (Amendment) Act provides that where a person is convicted of an offence ... the Court shall require that the person be medically examined. Where upon such examination it is found that the person examined is suffering from the Human Immune Deficiency Virus ... information to that effect must be given promptly to the complainant and the person medically examined. Where it is found that the complainant has contracted HIV, the court, may order the defendant to pay compensation to the complainant. This Sexual Offences Amendment Act is now in force.

43. In respect of the second recommendation listed above, legislative provisions to give protection to people who have AIDS from discrimination by co-workers, unions, employees or clients have been included in a new Basic Conditions of Work Bill, 2000 which was recently drafted. It is expected that this legislation will be implemented in the near future. The Bill provides in Part IX that an employer shall not require an employee to be screened or tested as evidence that that employee is not infected with HIV and AIDS. Clause 43 (2) provides that an employer shall not discriminate in the hiring, firing and other terms and conditions against an employee on grounds that that employee is infected with HIV/AIDS. Clause 43 (5) provides that an employer may as far as is practicable provide for the protection of employees in the workplace affected by or perceived to be affected by HIV/AIDS from stigmatization and discrimination by co-workers, unions, employers or clients.

44. In paragraph 12, the Committee states:

In relation to sexual harassment in the workplace, the Committee notes the judicial decision in Bank Employees' Union v. Republic Bank Ltd. Trade Dispute 17 of 1995, where it held that a person had been properly dismissed from his employment where his conduct, on the facts of the case, was properly classified as sexual harassment.

The adequacy of the judicial remedy should be kept under review and legislation passed if necessary.

Sexual harassment is not a statutory offence in Trinidad and Tobago. The Basic Conditions of Work Bill 2000 which has been recently drafted, contains provisions which seek to prohibit sexual harassment by employers, persons in authority and co-workers. Clause 44 (1) of the Bill contains the following provision:

> An employer or fellow employee shall not sexually harass an employee during the course of employment or at any work place.

45. In paragraph 13, the Committee states:

The Committee is disturbed to learn that, apart from prohibiting corporal punishment for persons under 18 years of age, the State party is still practising the punishments of flogging and whipping which are cruel and inhuman punishments prohibited by article 7.

Sentences of flogging or whipping should immediately be abolished.

In terms of removing corporal punishment from the Laws of Trinidad and Tobago the Government has taken a significant step. The Children's (Amendment) Bill, 1999 effectively abolishes corporal punishment as a penal sanction against children below the age of 18 years. It has also abolished corporal punishment against children in schools.

46. In respect of persons over 18 years however, the court still has a discretion to impose corporal punishment for specific offences such as offences involving violence where the offender inflicts a wound, or for robbery with violence or with aggravation, and for rape. A sentence of corporal punishment may not be administered until after the determination of any appeal against that sentence.

47. The statistics however reveal that although corporal punishment is still available for adult offenders on the statute books, the administration of corporal punishment has been minimal. Since 1999 no floggings have been carried out and only 17 whippings have been reported. The Government's position on this issue however, is that crime and sentencing are matters for the country to decide in light of the particular criminal environment in which we live. There has been an alarming increase in the number of sexual crimes reported against women and even men and in view of this, it is felt that for the present corporal punishment for adult offenders should be retained. The matter however will be kept under review to see whether at any time it will be possible to completely remove it as a penal sanction. Although the Law Commission recently recommended corporal punishment for persons convicted of drug offences, the Government has rejected this recommendation.

48. In paragraph 14, the Committee states:

The Committee regrets that problems relating to the police force, (such as corruption, brutality, abuse of power and obstacles placed in the way of police personnel who seek to correct such practices) identified over the last decade, have still not been rectified. It is concerned that there is little reduction in the numbers of complaints of harassment and battery submitted in 1999 and 2000.

The Plan of Action now in preparation should reinforce reforms already made and ensure that the culture of the force genuinely becomes one of public service; dereliction of duty, harassment and battery (among other things) by police officers should be the subject of swift disciplinary or criminal proceedings (arts. 2.1, 2.2, and 7).

The Government has recognized the deficiencies in the Police Service and is taking action in this regard. In August 1999 a bipartisan team headed by the Prime Minister and the Leader of the Opposition was established to work out measures, including any legislative action that may be required to provide solutions to problems besetting the police service. The team agreed that the matters requiring urgent attention include:

Corruption within the police service and appropriate methods of investigating the same;

The system of recruitment, discipline and promotion in the Police Service;

Management of the police service and other areas of concern regarding the administration of the police service.

49. A technical team was appointed by Cabinet to work with the bipartisan team which is comprised of Former President of the Republic of Trinidad and Tobago (Sir Ellis Clarke), Chairman of the Law Commission, Her Majesty's Chief Inspector of the Constabulary (Sir David O'Dowd), the former Commissioner of Police of Trinidad and Tobago, the former Commissioner of Police of Jamaica and Management Consultants.

50. The team is mandated to consider the 1991 O'Dowd Report with the objective of submitting a plan of action to implement the recommendations and reforms of previous Commissions.

51. In paragraph 15, the Committee states:

The Committee supports the expressed concern of the Trinidad and Tobago Police Complaints Authority about the failure of that Division adequately to report on continuing complaints in important categories.

The Complaints Division should improve the contents of its reports and accelerate its reporting process so as to enable the Police Complaints Authority thoroughly to fulfil its statutory functions, and so that violations of articles 7 and 9.1 may be properly investigated.

It is the responsibility of the Police Complaints Authority to draw to the attention of the Minister of National Security their concerns about the inadequacy of reports from the Police Complaints Division and to make recommendations to improve the system whether by administrative or legislative measures.

52. In paragraph 16, the Committee states:

The Committee is concerned about Chapter 15:01 of the Police Act which enables any policemen to arrest without a warrant in a large number of circumstances. Such a vague formulation of the circumstances in the Act gives too generous an opportunity to the police to exercise this power.

The Committee recommends that the State party confine its legislation so as to conform with article 9.1 of the Covenant.

The provisions setting out the police powers of arrest under the Police Service Act, Chapter 15.01, date from the Colonial period. Although on the face of it these arrest provisions appear to be very wide, in practice they are not abused. Persons arrested have available many remedies under domestic law including habeas corpus, Constitutional Motions and writ actions, to challenge the legality of their detention. Those lawfully arrested are entitled to be brought before a judicial authority within 48 hours of their arrest and in the case of non-serious offences are also entitled to bail.

53. In paragraph 17, the Committee states:

The Committee expresses its concern over prison conditions; whilst accepting that the opening of and phased introduction of prisoners into the new maximum security prison, together with the impact of non-custodial sentences, will reduce the population held in outdated establishments, the conditions in these establishments are incompatible with article 10.

In 1999, in the case of *Dole Chadee et al.*, the United Nations Human Rights Committee had an opportunity to consider prison conditions in Trinidad and Tobago. The State was able to make representations to the Committee. According to the prisoners there had been a violation of article 10 of the Covenant because of the inhuman conditions of detention to which they had been subjected since their arrest. The United Nations Human Rights Committee found however that:

> "[The prisoners] have provided information with regard to their conditions of detention. The State party has addressed the claims made by the authors, and has submitted that the authors' conditions of detention do not violate the standards set out in the Covenant. On the basis of the information before it, the Committee is not in a position to make a finding of a violation of article 10 of the Covenant. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any of the provisions of the Covenant".

54. Like many countries, Trinidad and Tobago experienced a rapid rise in its prison population. This did result in some overcrowding. The Government took steps to alleviate the problem by commissioning the construction of a new maximum-security prison at Golden Grove to house 2,100 prisoners. This new facility is being occupied on a phased basis. Since 1998 prisoners have been transferred from the Port of Spain State Prison to the new facility at Golden Grove and this will continue until the prison is fully occupied. This has relieved the problem of overcrowding within the prison system. In the condemned divisions of the Port of Spain State Prison each prisoner has always occupied his own individual cell.

55. The Prison Service has in place rehabilitative programmes such as educational and vocational training programmes for prisoners. The Welfare Department of the Prison Service also provides educational, counselling and pre-release services to prisoners.

56. The existing Prison Rules were inherited from the British and came into force in 1943. Although there have been only minor amendments of the Rules, there have been a lot of prison reforms and improvements with respect to a prisoner's rehabilitation and accommodation. Recently, the Government has caused the Law Commission to prepare a paper on penal reform. Based on the recommendations, the Prison (Amendment) Rules have been drafted. These suggested reforms focus on areas such as the conditions of accommodation in prison, punishment and the internal complaint procedure. They also address any problems of overcrowding and seek to abolish the use of corporal punishment for prisoners under the age of 18 years. It is hoped that this legislation will be implemented in the near future. In introducing these reforms, the Government is working towards compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners. In addition, Trinidad and Tobago is one of the first countries in the Caribbean to introduce, by legislation, a system for Community Service Orders and Community Mediation in cases of certain non-serious offenders.

57. In paragraph 18, the Committee states:

The Committee recommends that legal limitations on abortion be reappraised and that restrictions which may risk violation of women's rights be removed from the law, by legislation if necessary (arts. 3, 6.1 and 7).

In practice medical practitioners can terminate a pregnancy prematurely on certain medical grounds. For example, where the mother has contracted Rubella during the pregnancy. In other cases, it is possible to make an application to the Court for an order to terminate a pregnancy. The Government has no proposals to legalize abortion.

58. In paragraph 19, the Committee states:

The Committee is concerned that the existing laws on defamation could be used to restrict criticism of Government or public officials.

The State party should proceed with its proposals to reform the law of defamation, ensuring that a balance between protection of reputation and freedom of expression (art. 19).

Consistent with the Committee's recommendation the Government is taking steps to reform the law of defamation. With this in mind, the Government in 1997 prepared and published a Green Paper entitled "Reform of Media Law - Towards a Free and Responsible Media" for public comment. At page 5 of the Green Paper, it was noted that "Such media law statutes as do exist are mainly taken direct from British equivalents which have been reformed in Britain without further action in Trinidad. One bad example is the Libel and Defamation Act, which dates from 1846 and embodies British law, as it existed at that time. It contains the offence of criminal libel, which many believe should be abolished and includes none of the reforms achieved in Britain by the Defamation Act of 1952 ... Thus the media in Trinidad and Tobago is denied the statutory extension of the defence of qualified privilege, and important procedural extension of the defences of justification and fair comment". Page 13 of the Green Paper called for repeal of the Defamation Act. The Paper also recommended the abolition of criminal libel to promote greater freedom of the press and further called for the extension of the defences of qualified privilege, justification and fair comment; which defences are not available to the media under

existing law. The proposed reforms contained in the Green Paper were opposed by certain sectors of the media. The Government however conducted further research and drafted a Defamation Bill to reflect the norms of the United Kingdom legislation and has committed itself to the passage of that legislation into law.

59. This draft Defamation Bill proposes to give statutory effect to the defences of absolute privilege, qualified privilege and the common law defence of "fair comment". In addition new defences to an action for defamation will be introduced including the defence of "triviality" to discourage the bringing of frivolous actions. Also proposed is a provision to afford protection to a publisher of information where he can prove that the matter complained of was obtained from a reputable news service agency.

60. The Government accordingly feels justified by the United Nations Human Rights Committee's statement that the Government should proceed with proposals to reform the law of Defamation.

61. In paragraph 20, the Committee states:

The Committee has long awaited information on follow-up of its views as pressed in response to communications.

Complete replies should be given as to the grant of remedies as recommended by the Committee, in full compliance with article 4.2 of the Optional Protocol.

In the discharge of the State's duty to consider the Views of the Committee, the Government directs the recommendations to the appropriate bodies who carefully consider all recommendations and make decisions on them.

62. In cases where persons have committed particularly heinous crimes of murder and the Privy Council and the local courts have not found any Constitutional rights have been infringed, there is a legitimate public interest that the lawful sentence of the Court is carried out. The State must exercise caution in this regard as public confidence in the administration of criminal justice must not be undermined. In all cases in which the Committee has found a breach of the person's rights by the State, the Privy Council, when hearing Constitutional Motions alleging the same breaches has found no liability on the part of the State.

63. In paragraph 21, the Committee states:

The Committee requests the fifth periodic report to be submitted by 31 October 2003. It requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society, and non-governmental organizations operating in the State party.

In the past, Periodic Reports were not widely circulated. However, the Government is taking steps to correct this. The Third Periodic Report of the Republic of Trinidad and Tobago on the International Covenant on Civil and Political Rights was laid in Parliament and a statement was made by the Attorney-General when it was laid. This was communicated to the population

through the media. Copies of the Report were then circulated to Trinidad and Tobago missions abroad, foreign missions in Trinidad and Tobago, international human rights organizations, all non-governmental organizations in Trinidad and Tobago, hospitals, public libraries, and honorary consuls. Comments have been requested from the various organizations on the content of the Report.

64. Currently, steps are being taken to have the Report published on the Web page of the Ministry of the Attorney-General and Legal Affairs and to have copies of the Report made available for purchase by members of the public at a nominal fee. The Report also contains a copy of the Covenant. The Government intends to continue to lay these Reports in Parliament and to make copies of them available to members of the public.

65. The Concluding Observations of the Human Rights Committee together with these comments by the Government will also be widely disseminated. Recently the Attorney-General held a press conference to discuss these Concluding Observations. A Press Statement was also issued by the Attorney-General on the Observations.

66. In accordance with article 40, paragraph 5 of the Covenant and with rule 71 (2) of the Committees rules of procedure, the Government of Trinidad and Tobago requests that the comments contained in this document should be included in the Committee's report to the Economic and Social Council and the Third Committee.